

#### REMARKS

The examiner has made a requirement for election of species.

Applicant petitions against the requirement for election of species on the ground that it is not in accordance with the rules and practice governing requirements for election of species.

Election of species practice is governed by 37 CFR 1.146, which states that if the application contains a generic claim and claims to more than one patentably distinct species embraced by the generic claim, the examiner may require the applicant to elect a [single] species of the invention to which the claims will be restricted if no generic claim is found to be allowable. The application does not contain a generic claim that embraces the four "species" identified by the examiner. MPEP 806.04(e) states that claims are never species and that species always refer to the different embodiments of the invention. Applicant submits that although each of the paragraphs referred to by the examiner includes the word "embodiment," the use of the word "embodiment" in these paragraphs is not the usage referred to in MPEP 806.04(e). The four "species" identified by the examiner are described not in terms of illustrated embodiments but respective definitions of the invention that conform with the original claims 1, 7, 9 and 33 respectively. As evidence that the four "species" identified by the examiner are not species within the contemplation of 37 CFR 1.141, applicant respectfully points out that it is logically impossible to write a generic claim that covers the system for measuring, the completed program, the method for determining and the projectile as defined in the respective aspects of the invention.

Further, the requirement for election of species refers to 37 CFR 1.143, which pertains only to a requirement for restriction.

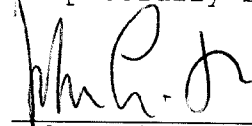
In reply to the requirement for election of species, applicant elects Species I. Claims 48-50 are readable on the elected species.

Although the examiner's requirement is expressed as a requirement for election of species, it appears that in fact the requirement amounts to a requirement for unity of invention.

If, on further consideration, the examiner agrees that the requirement for election of species is improper but determines that a requirement for unity of invention under 37 CFR 1.499 is appropriate, based on the claims corresponding to the four paragraphs identified on page 2 of the Office Action, applicant elects claims 48-50, reserving

the right to traverse pending the examiner's formal presentation of the requirement for restriction.

Respectfully submitted,



---

John Smith-Hill  
Reg. No. 27,730

SMITH-HILL & BEDELL, P.C.  
16100 N.W. Cornell Road, Suite 220  
Beaverton, Oregon 97006

Tel. (503) 574-3100  
Fax (503) 574-3197  
Docket: SWIN 3199